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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
_____

Ex parte DAVID L. MULTER, ROBERT E. GARNER,
LEIGHTON A. RIDGARD, LIAM J. STANNARD,
DONALD W. CASH and RICHARD M. ONYON
_____

Appeal 2009-012127
Application 09/491,675
Technology Center 2100
_____

Before MAHSHID D. SAADAT, KRISTEN L. DROESCH and
JASON V. MORGAN, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek review under 35 U.S.C. § 134(a) of a final rejection of claims 49-53, 55-61, 63, 65-70 and 72-75[1]. We AFFIRM-IN-PART.

BACKGROUND

Appellants' invention is related to systems and methods for transferring and synchronizing data between computer systems on which the data is stored. Spec. pp. 5-7; Abs.

Claim 49 is illustrative:

> A data synchronization system for a first system having a plurality of data sources each with a data source format, and a second system having a plurality of data sources each with a data source format; comprising:
>
> a first data synchronization[2] on the first system transmitting at least one set of difference information to an output;
>
> a second data synchronizer on the second system capable of receiving said at least one set of difference information; and
>
> a network for coupling the first file system and the second file system to allow communication between the first file system and the second file system when the first and second file systems are physically remote from each other.

The Examiner relies on the following prior art:

Alley   5,710,922   Jan. 20, 1998

Claims 49-53, 55-61, 63, 65-70 and 72-75 are rejected under 35 U.S.C. § 102(e) as anticipated by Alley.

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[1] Claims 1-48, 54, 62, 64 and 71 have been cancelled.
[2] The term "synchronization" appears to be a typographical error where "synchronizer" was intended.

ISSUES

Did the Examiner incorrectly find that Alley describes a data synchronization system that includes first and second file systems that are physically remote from each other?

Did the Examiner incorrectly find that Alley describes first and second data synchronizers each of which includes a copy of a previous state of each the data sources?

Did the Examiner incorrectly find that Alley describes comparing data from a first file on a first system to a copy of a previous data state of the first file?

Did the Examiner incorrectly find that Alley describes a data synchronization system including a server and first and second differencing synchronizers that output/retrieve data to/from the server?

FINDINGS OF FACT ("FF")

1. Alley describes a portable remote pen-based computer system that includes a CPU and a mass storage enclosed within a rectangular enclosure and a local desktop computer that has sufficient power and memory to back up the pen-based computer system. Col. 4, ll. 8-16; col. 5, ll. 14-25, 44-48; col. 8, ll. 42-50; Figs. 1-2.

2. Alley describes, referring to Figure 3 below [numbers from Figure 3 inserted], a remote/local docking system 72 that includes a remote computer system (e.g., a portable pen-based computer system) 74 with a docker interface 78 and a local computer system (e.g., a desktop computer) 76 with a docker application 80. Col. 7, l. 64-col. 8, l. 6.
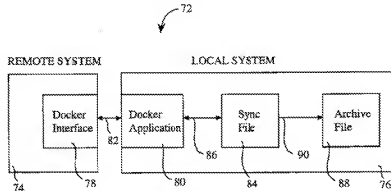
Alley's Figure 3 is reproduced below:

Figure 3 depicts a remote computer system and a local computer system.

3. The docker interface 78 is a compact piece of code running on the remote computer system allowing the remote computer system to bidirectionally communicate 82 with the larger docker application 80 running on the local computer system. Col. 8, ll. 10-13.

4. The docker application 80 bidirectionally communicates 86 with sync file 84 which can send 90 information to an archive file 88 or memory. Col. 8, ll. 13-18.

5. Alley describes creating a synchronization list that identifies: 1) each of the selected records that was deleted on the first computer system since the last synchronization but still exists on the second computer system; 2) each of the selected records that was deleted on the second computer system since the last synchronization but still exists on the first computer system; 3) each of the selected records that was added to the first computer system; and 4) each of the selected records that was added to the second computer system. Col. 2, ll. 55-64.

6. The synchronization list is then modified and used to synchronize the first and second computer systems, such that records that have been deleted on one of the computer systems are deleted from the other and records that

have been added to one of the computer systems are added to the other. Col. 2, l. 64-col. 3, l. 3.

    7. In the case where a record has been deleted from the remote computer system (e.g., a portable pen-based computer system), the corresponding record on the local computer system (e.g., a desktop computer) is first archived by saving the record to the archive memory and then the record is deleted. Col. 11, ll. 65-67; col. 15, ll. 10-15.

ANALYSIS

Claims 49-50 and 55-60

    Independent claim 49 recites: "a network for coupling the first file system and the second file system to allow communication between the first file system and the second file system when the first and second file systems are physically remote from each other." Appellants dispute the Examiner's finding that Alley describes all of the limitations of claim 49, specifically arguing that Alley requires physical docking. Ans. 7-8; Reply Br. 5-6. Appellants argue that Alley does not disclose, teach or suggest a system where the two computing devices may be synched up when they are remote from one another, but instead describes that the pen-based computer system is synched up to the desktop computer only when the pen-based computer is docked to the desktop computer. Ans. 8; Reply Br. 6.

    Appellants do not direct us to, and we cannot find where Alley describes physical docking. Instead, Alley describes a remote/local docking system 72 that includes a local computer system (e.g., a desktop computer) 76 with a docker application 80 and a remote computer system (e.g., a portable pen-based computer system) 74 with a docker interface 78 which is code that allows the remote system to bidirectionally communicate 82 with a

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docker application 80 on the local computer system 76. Col. 7, l. 64-col. 8, l. 10; FFs 2-3. Alley's description is silent as to the specific means of docking i.e., whether it is by a physical connection or wireless.

In any event, even if Alley requires physical docking between the remote computer and local computer systems, Appellants' arguments are not commensurate in scope with the claim limitations. Claim 49 does not require the first system (i.e., the whole system) and second system (i.e., the whole system) to be physically remote from each other. Rather, claim 49 only requires the *first file system* (from the first system) and the *second file system* (from the second system) to be physically remote from each other. Even if Alley's remote system (i.e., pen-based computer) and local system (i.e., desktop computer) are physically docked as argued by Appellants, the file system of Alley's pen-based computer and file system of the desktop computer are physically remote from each other. Alley's desktop computer archive file 88 or memory (i.e., file system) is located at some distance away from or physically remote from the mass storage (i.e., file system) of the pen-based computer system because the mass storage (i.e., file system) of the pen-based computer is enclosed within a rectangular enclosure. Col. 4, ll. 8-16; col. 5, ll. 14-25, 44-48; col. 8, ll. 42-50; col. 11, ll. 65-67; col. 15, ll. 10-15; FFs 1, 7.

For all these reasons, we sustain the rejection of claim 49 as anticipated by Alley. Since Appellants do not separately argue the limitations of dependent claims 50 and 55-60, we sustain the rejection of claims 50 and 55-60 as anticipated by Alley for the same reasons.

Claims 66 and 73-75

      Appellants argue for the first time in its Reply Brief that
Alley does not disclose, teach or suggest the limitations of claim 66. Reply
Br. 9. Since this argument is presented for the first time in the Reply Brief,
absent a good cause showing why is was not earlier presented in the Appeal
Brief, this argument is untimely and deemed waived. *Ex parte Borden*, 93
USPQ2d 1473 (BPAI 2010) (informative); 35 C.F.R. § 41.37(c)(1)(vii); *see
also Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). In
any event, Appellants' argument is unpersuasive because it does not offer a
meaningful explanation of the deficiencies of Alley's description with
respect to the limitations of claim 66. Reply Br. 5-9.

      For these reasons, we sustain the rejection of claim 66 as anticipated
by Alley. Since Appellants does not separately argue the limitations of
dependent claims 73-75, we sustain the rejection of claims 73-75 as
anticipated by Alley for the same reasons.

Claims 51-53, 67-70 and 72

      Claim 51 depends from claim 49 and further recites: "each said data
synchronizer comprises: a data source interface; a copy of a previous state of
each said data source . . . ." Appellants dispute the Examiner's finding that
Alley describes a copy of a previous state of each data source. App Br. 8-9;
Reply Br. 6-7; Ans. 4, 11 (citing col. 2, ll. 56-67 *et seq.*; col. 7, l. 64-col. 8, l.
15; Fig. 3).

      We agree with Appellants. Alley describes creating a synchronization
list that identifies: 1) each of the records deleted on the first computer
system since the last synchronization but still exists on the second computer
system; 2) each of the records that was deleted on the second computer

system since the last synchronization but still exists on the first computer system; 3) each of the selected records that was added to the first computer system; and 4) each of the selected records that was added to the second computer system. FF 5. The synchronization list is then modified and used to synchronize the first and second computer systems, such that records that have been deleted on one of the computer systems are then deleted from the other computer system and records that have been added to one of the computer systems are added to the other. FF 6. The Examiner does not direct us to, and we cannot find, where Alley describes that *each* data synchronizer (i.e., both computer systems) includes a data source interface and a copy of a previous state of each data source.

For these reasons, we do not sustain the rejection of claim 51 as anticipated by Alley. Since claims 52-53 ultimately depend from claim 51, we do not sustain the rejection of claims 52-53 as anticipated by Alley.

Similar to claim 51, claim 67 depends from claim 66 and further recites "comparing data from the first file to a copy of a previous state of data from the first file." Appellants dispute the Examiner's finding that Alley describes the limitations of claim 67. App. Br. 11; Reply Br. 9; Ans. 7 (citing col. 2, ll. 55-67 *et seq.*). Appellants specifically argue that Alley's description of comparing data from a first system against data existing in the system to be updated does not meet the claim limitations because the data on the system to be updated does not constitute a copy of the previous state of data from the first file. App Br. 11; Reply Br. 9. We agree with Appellants' arguments because the Examiner does not direct us to, and we cannot find, where Alley describes comparing data *from the first file* (on a first system) to a copy of a previous state of data *from the first file*.

For these reasons, we do not sustain the rejection of claim 67 as anticipated by Alley. Since claims 68-70 and 72 ultimately depend from claim 67, we do not sustain the rejection of claims 68-70 and 72 as anticipated by Alley.

Claims 61, 63 and 65

Independent claim 61 recites: "[a] data synchronization system, comprising: a server; a network . . . ; a first system . . . ; a differencing synchronizer on the first system . . . outputting the differencing data to the server, and retrieving differencing data from the server . . . ; a second system . . . ; a differencing synchronizer on the second system . . . outputting the differencing data to the server via the network, and retrieving the first set of differencing data from the server via the network . . . ." Appellants dispute the Examiner's finding that Alley describes all of the limitations of claim 61. Ans. 5-6 (citing col. 2, ll. 5-24, *et seq.*; col. 2, ll. 55-67 *et seq.*; col. 3, ll. 4-25; Fig. 3). Appellants argue that Alley does not describe outputting differencing data to a server and retrieving differencing data from a server, but instead describes transfer of information between two systems that are docked to each other. App. Br. 10; Reply Br. 8.

We agree with Appellants' argument. The Examiner does not direct us to, and we cannot find, where Alley describes either a server or that the pen-based computer or desktop computer (i.e., first system and second system) output/retrieve data to/from a server.

For all these reasons, we do not sustain the rejection of claim 61 as anticipated by Alley. Since claims 63 and 65 ultimately depend from claim 61, we do not sustain the rejection of claims 63 and 65 as anticipated by Alley.

DECISION

We AFFIRM the rejection of claims 49, 50, 55-60, 66 and 73-75 under 35 U.S.C. § 102(e) as anticipated by Alley.

We REVERSE the rejection of claims 51-53, 61, 63, 65 and 67-70 and 72 under 35 U.S.C. § 102(e) as anticipated by Alley.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

<u>AFFIRMED-IN-PART</u>

msc